IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.313 OF 1997

The Commissioner of Income Tax
Nashik .. Applicant.
V/s.
Shirpur Shetkari SSK Ltd, Shivajinagar
Dahiwad, Tal Shirpur Dist Dhule .. Respondent.

Mr.A.S. Rao with Mr.Pankaj Kapoor for the applicant.

Mr.S.N. Inamdar with Mr.P. Vaidya for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 26TH APRIL, 2005.

P.C. :

1. Heard the learned counsel for the parties. The Tribunal has referred following questions for the opinion of this Court, reading as under :

> Whether on the facts and in the circumstances of the case the ITAT relying on the decision of its Special Bench in the case of Shri Chhatrapati SSK Ltd. (198 ITR 78 - AT) was right in deleting the following additions by holding that the various funds and deposits collected by the assessee society out of the sugarcane purchase price payable to the cane growners are not trading receipts of the assessee as held by the Supreme Court in the case of Bazpur Co-op. Sugar Factory Ltd. 172 ITR 321 and 177 ITR 469 ?
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> | | |
> |---|---|
> | 1. Non-refundable deposits | Rs.1781582 |
> | 2. Interest on N.R.D. | Rs. 639672 |
> | 3. C.M. Relief fund | Rs. 178322 |
> | 4. Hutment fund | Rs. 89160 |
> | 5. Cane development fund | Rs. 713287 |
> | 6. Area development fund | Rs. 178322 |

2. In so far as all other items except cane development fund, area development fund and interest on NRD are concerned, the issue is covered by the decision of the Apex Court in the case of **Siddheshwar S.S.K. Ltd. V/s. CIT [(2004) 270 ITR 1 (SC)]** in favour of the assessee and against the revenue. So far as Cane Development Fund, area development fund and interest on NRD are concerned, the issues will have to be referred back to the Tribunal for consideration afresh as per the judgment of the Apex Court in the case of Siddheshwar S.S.K. Ltd. (supra) as such the said issues stand remitted back to the Tribunal for consideration afresh.

3. The reference is disposed of in the above terms with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)